



Agenda Date: 9/26/01

Agenda Item: 4D

STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR AN)
ORDER AUTHORIZING CAVALIER TELEPHONE)
MID-ATLANTIC, L.L.C. TO PROVIDE LOCAL)
EXCHANGE AND INTEREXCHANGE AND)
EXCHANGE ACCESS TELECOMMUNICATIONS)
SERVICES THROUGHOUT NEW JERSEY)

ORDER OF APPROVAL

DOCKET NO. TE01060370

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated June 6, 2001, Cavalier Telephone Mid-Atlantic, LLC (Petitioner or Cavalier) filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange, exchange access and interexchange services throughout the State of New Jersey. Cavalier responded to a Staff questionnaire by letter dated August 8, 2001.

According to the petition, Petitioner was incorporated under the laws of the State of Delaware on May 5, 2001. Petitioner's principal offices are located at 2134 West Laburnum Avenue, Richmond, Virginia 23227. Petition at 1.

Petitioner submitted copies of its Articles of Incorporation, New Jersey Certificate of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. Petition at 1, Exhibit A. The petition states that Cavalier is a competitive local exchange carrier (CLEC) providing telecommunications services to both business and residential customers. Its parent company, Cavalier Telephone LLC, provides the same services in Virginia. As of May 31, 2001, Cavalier Telephone LLC and Petitioner served approximately 80,000 access lines in the states of Virginia, Maryland and Pennsylvania. Petition at 2. Petitioner advised that it is currently authorized to provide facilities-based local exchange and interexchange services in Maryland and Pennsylvania. In addition, its parent company, Cavalier Telephone LLC, is authorized in Virginia. In addition, Cavalier indicates that it has no pending civil, criminal, or administrative actions against it. Cavalier advised that it is planning to initiate negotiations with Verizon New Jersey, Inc. for an interconnection agreement. In its petition, Petitioner advised that it seeks authority to provide facilities-based local exchange and interexchange telecommunications services to business and residential customers throughout New Jersey. Cavalier will provide local exchange access and

interexchange services from its own network, deploying a Nortel DMS 500 switching platform to serve its customers in New Jersey. The switch will be integrated with the Petitioner's customers through end office collocation arrangements between it and Verizon. Petitioner also provides its own fiber-optic network linking the collocation sites to the serving switch. Petition at 3.

Petitioner requested that the financial documentation submitted in this filing not be made a part of the public record pursuant to Title 47 of the New Jersey Statutes Annotated. Petitioner stated the reason for this is because the company is privately held and disclosure of such financial information could be used by competitors to determine market share, revenue and other information damaging to Cavalier in the marketplace. Petitioner requested waivers of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:10-1.16, which require that its books and records be maintained within New Jersey and in accordance with the Uniform System of Accounts (USOA). Petition at 6. Cavalier requested that, in the interest of efficiency, it be given permission to maintain these books and records in accordance with Generally Accepted Accounting Principles (GAAP) and outside of New Jersey at its corporate offices in Richmond, Virginia. Petitioner also stated that, upon written notice from the Board, it will produce its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of these records. Petition at 7.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petition at 9. Petitioner also asserted that approval of this petition will provide New Jersey customers with access to new technologies and service choices and will result in the increase in the availability of facilities-based services in New Jersey. In addition, Petitioner stated that the telecommunications users of such services will be the ultimate beneficiaries since they will be provided with greater choice of innovative services at competitive rates. Petition at 6.

With regard to its technical and managerial qualifications, Cavalier stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petition at 2 and 3. Petitioner submitted the professional biographies of its key personnel who, according to Cavalier, are well qualified to execute its business plans, and have extensive managerial and technical experience in the telecommunications industry. Petition at 2, Exhibit 2.

Petitioner has submitted, as evidence of its financial qualifications, a balance sheet for itself and its parent corporation, Cavalier Telephone, LLC., and will need to file pro forma financials for its New Jersey operations prior to approval of its tariff.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Cavalier's petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange, exchange access and interexchange telecommunications services in New Jersey subject to approval of its tariff and the submission of pro forma financial statements for its New Jersey operations. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided.

Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that Petitioner maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

Regarding the Petitioner's request for confidential treatment of the financial information submitted under seal, the Board FINDS that the Petitioner has shown good cause, pursuant to N.J.A.C. 1:1-14.1, that this information merits protection from disclosure in order to prevent competitive harm to the Petitioner. Therefore, the Board DIRECTS that this financial information be kept under seal.

DATED: 09/27/01

BOARD OF PUBLIC UTILITIES
BY:

(signed)
CONNIE O. HUGHES
ACTING PRESIDENT

(signed)
FREDERICK F. BUTLER
COMMISSIONER

(signed)
CAROL J. MURPHY
COMMISSIONER

ATTEST:

(signed)
FRANCES L. SMITH
BOARD SECRETARY